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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MPA/173964

PRELIMINARY RECITALS

Pursuant to a petition filed April 27, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability in regard to Medical Assistance (MA), a hearing was held on June 16, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied the petitioner's request of Personal Care Worker (PCW) hours.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], RN BSN
Division of Health Care Access and Accountability
1 West Wilson Street, Room 272
P.O. Box 309
Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner is a resident of Milwaukee County.

2. On November 30, 2015 the petitioner's provider completed a Personal Care Screening Tool (PCST).
3. On January 7, 2016 the petitioner's provider submitted a medical prior authorization request for Personal Care Worker (PCW) hours based on the PCST. The provider requested 44.75 PCW hours per week with an additional 24 hours per year of as needed PCW time.
4. The provider and the Department exchanged some additional information.
5. On April 6, 2016 the Department notified the petitioner in writing that they denied his PCW prior authorization request.
6. On May 20, 2016 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.
7. The petitioner lives with a non-relative.
8. The petitioner is 62 years old. He is diagnosed with rheumatoid arthritis, gastro-esophageal reflux disease, low back pain, hyperlipidemia and hyperglyceridemia.

DISCUSSION

Personal Care Services are a covered service by Medicaid. They are defined as, "medically oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his or her place of residence in the community. These services shall be provided upon written orders of a physician by a provider certified under s. DHS 105.17 and by a personal care worker employed by the provider or under contract to the provider who is supervised by a registered nurse according to a written plan of care." *Wis. Admin. Code DHS §107.112(1)(a)*.

Prior authorization is required for personal care services in excess of 250 hours per calendar year and for home health services covered under *Wis. Admin. Code DHS §107.11(2)*, that are needed to treat a recipient's medical condition or to maintain a recipient's health. *Wis. Admin. Code DHS §107.112(b)*

The Department of Health Services requires prior authorization of certain services to:

1. Safeguard against unnecessary or inappropriate care and services;
2. Safeguard against excess payments;
3. Assess the quality and timeliness of services;
4. Determine if less expensive alternative care, services or supplies are usable;
5. Promote the most effective and appropriate use of available services and facilities; and
6. Curtail misutilization practices of providers and recipients.

Wis. Admin. Code § DHS107.02(3)(b)

"In determining whether to approve or disapprove a request for prior authorization, the department shall consider:

1. The medical necessity of the service;
2. The appropriateness of the service;
3. The cost of the service;
4. The frequency of furnishing the service;
5. The quality and timeliness of the service;
6. The extent to which less expensive alternative services are available;
7. The effective and appropriate use of available services;
8. The misutilization practices of providers and recipients;

9. The limitations imposed by pertinent federal or state statutes, rules, regulations or interpretations, including Medicare, or private insurance guidelines;
10. The need to ensure that there is closer professional scrutiny for care which is of unacceptable quality;
11. The flagrant or continuing disregard of established state and federal policies, standards, fees or procedures; and
12. The professional acceptability of unproven or experimental care, as determined by consultants to the department.”

Wis. Admin. Code §DHS107.02(3)(e)

“Medically necessary” means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury or disability; and
- (b) Meets the following standards:
 1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
 2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider, and the setting in which the service is provided;
 3. Is appropriate with regard to generally accepted standards of medical practice;
 4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
 5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
 6. Is not duplicative with respect to other services being provided to the recipient;
 7. Is not solely for the convenience of the recipient, the recipient's family, or a provider;
 8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
 9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

Wis. Admin. Code. §DHS 101.03(96m)

The petitioner has the burden to prove, by a preponderance of the credible evidence, that the requested services meet the approval criteria.

The petitioner’s provider requested 44.75 hours per week of PCW time plus 24 hours per year of as needed time. The Department denied this request. At the hearing, the petitioner reiterated the provider’s request for 44.75 hours per week of PCW time plus 24 hours per year of as needed time.

In determining how many hours of personal care services an individual is allowed, a service provider completes a personal care screening tool (PCST). A link to the blank form can be found in the on-line provider handbook located on the Forward Health website: <https://www.forwardhealth.wi.gov/WIPortal>, under topic number 3165. The responses are then entered into a web-based PCST, which cross references the information with the Personal Care Activity Time Allocation Table.

The Personal Care Activity Time Allocation Table is a guideline showing the maximum allowable time for each activity. *On-Line Provider Handbook Topic #3165*; this chart can also be found at the aforementioned website.

In general seven activities of daily living (ADLs) are reviewed: 1) Bathing, 2) Dressing, 3) Grooming, 4) Eating, 5) Mobility, 6) Toileting, and 7) Transfers. In addition, Medically Oriented Tasks (MOTs), such as glucometer readings or medication assistance, are also examined.

In this case I have allowed time in the areas of bathing and dressing. Per the Personal Care Activity Time Allocation Table 30 minutes is allowed for bathing and 20 minutes for dressing. One episode of dressing is included in bathing. The total ADL time is 50 minutes. I have allowed this time because the petitioner is 62 and diagnosed with rheumatoid arthritis, gastro-esophageal reflux disease, low back pain, hyperlipidemia and hyperglyceridemia. The petitioner's PCW testified that she must help him when he is in the shower and with dressing due to his pain and restriction of movement. The Department highlights that the pain must not be terrible because he only takes over the counter pain medication. The petitioner also takes psychotropic medication, which may limit his ability to take other pain medication. The petitioner also does not speak English. There appears to be some language barriers.

Per the on-line Provider Handbook, topic 3167, additional time may be allocated for incidental cares, such as light meal preparation, incidental laundry, or light cleaning after bathing or grooming petitioner. For an individual who does not live alone, time equal to 1/4 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. For an individual who lives alone, time equal to 1/3 of the time it actually takes to complete Activities of Daily Living (ADLs) and Medically Oriented Tasks (MOTs) may be allocated. The petitioner lives with someone. Thus, 1/4 of 50 minutes, which is the total ADL time, is 12.5. The petitioner's total PCW time is 62.5 minutes per day. Giving the petitioner every benefit of the doubt, I rounded to 1.25 hours per day of PCW time. This additional time is also supported by the PCW's testimony on days when the petitioner is sick he needs more assistance in other areas and these tasks take longer to perform.

I have not allowed time in other requested areas including grooming, eating, mobility, transferring, and toileting. The petitioner's PCW testified that he only needs assistance in these areas if he is not feeling well. She could not say how often the petitioner is not feeling well. He also uses a cane and assistance devices for mobility. There were some limitations in these areas with body movement like reaching, getting up, and moving, however, the petitioner has adaptive equipment and he only needed hands on assistance when he was sick. PCW time in these areas is not covered.

I have not allowed time for medication assistance. This is only allowed if ordered by a physician and supervised by a nurse under a plan of care. It is the RN that must set up the weekly pill holder. In this case the PCW sets up the weekly pill holder, and the petitioner takes the pills each day on his own. This is not a covered task for a PCW to perform.

I did not allow additional time for difficult behaviors because the PCW testified that although the petitioner was very depressed, he did not have difficult behaviors that made PCW tasks more time consuming to perform.

I have still approved a total of 1.25 hours per day of PCW time for a total of 8.75 hours per week. This includes ADL and incidental PCW time.

I note to petitioner that the provider will not receive a copy of this Decision. In order to have the PCW hours approved here, petitioner must provide a copy of this Decision to the provider. Then, the provider must submit a *new* prior authorization request to receive the approved coverage.

CONCLUSIONS OF LAW

The Department incorrectly denied the prior authorization request for PCW hours. The petitioner requires 8.75 PCW hours per week for the current authorization period.

THEREFORE, it is

ORDERED

That the petitioner's provider is hereby authorized to provide the petitioner with 8.75 PCW hours weekly for the period beginning February 20, 2016, and to submit its claim, along with a copy of this Decision and a new prior authorization request, to ForwardHealth for payment. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

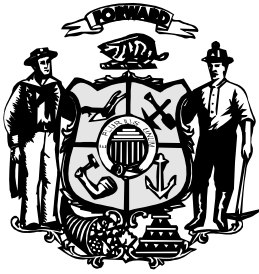
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of June, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 21, 2016.

Division of Health Care Access and Accountability

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